IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7700 of 1992
with
SPECIAL CIVIL APPLICATION No.7746 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARJANBHAI R ASHIYANI
Versus
GUJARAT STATE SEEDS CORPN

Appearance:
MR MR ANAND for Petitioner
MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 22/09/2000

COMMON ORAL JUDGEMENT :

The present petitions are filed by the petitioners challenging the seniority list at Annexure 'E' and the orders at Annexure 'F', 'H' and 'J' and also Circular at Annexure 'K', being illegal,

unconstitutional, null, void and of no effect whatsoever. It was, however, prayed by the petitioners that the seniority of the petitioners be fixed on the basis of date of appointment and accordingly to show the names of the petitioners between serial nos.54 and 55 (in case of petitioner in SCA No.7700/92) and between serial nos.2 and 3 (in case of petitioner in SCA No.7746/92). The petitioners had also prayed for all consequential benefits, such as, pay, future promotion, seniority, etc.

2. The matters were admitted on 23.10.1992 and notice as to interim relief was made returnable on 23.11.1992 and till then ad interim relief was granted in terms of para 10. Para 10 reads as under:

> "Pending admission, final hearing and disposal of this petition, Your Lordships may be pleased to grant interim relief restraining the respondent corporation from superseding the petitioner in the matter of promotion to the post of Senior Seed Officer in the pay scale of Rs.2000- 3200 by any person who was appointed as Technical Assistant (Junior) after the petitioner's appointment on 7.11.1978 pursuant to the order of 27.10.1978."

3. Ad interim relief granted on 23.10.1992 was extended from time to time and on 19.1.1993, the ad interim relief was directed to be continued till final disposal of the petition.

4. Today, when the matter is called out, Shri D.C. Raval, learned advocate appearing for the petitioner submitted that the issue involved in the petition is squarely covered by the judgment of the Honorable the Apex Court in the matter of S.B. Patwardhan and anr. v. State of Maharashtra and others, reported in AIR 1977 SC 2051. In that matter Rule 8 (iii) of Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960 was under challenge and the Honorable Apex Court while considering the same was pleased to observe as under :

> "32. Rule 8(1) says that the various categories which manned the Class I sub-divisional posts were being compiled into. two lists: (i) One list of Bombay Service of Engineers Class II cadre of permanent Deputy Engineers and (ii) the other list of officiating Deputy Engineers. The future recruitment to Class II cadre was to be made by (a) nomination of candidates recruited directly by competitive

examination and (b) promotion from the list of officiating Deputy Engineers, in the ratio of 2/3rd and 1/3rd respectively. After reciting that direct recruitment of temporary Deputy Engineers was stopped, rule 8(ii) provides that further officiating vacancies would be manned from the ranks of the Subordinate Service of Engineers. For this purpose a statewise Select Seniority List was to be maintained of members to the Subordinate Service of Engineers, considered fit to hold subdivisional charge. For inclusion in this list graduates, diploma holders and non-qualified persons had to have to their credit Service of not less than 3, 8 and 13 years respectively. For confirmation as a Deputy Engineer the officer was expected to have put in not less than three years' service as officiating Deputy Engineer. Then comes the much-debated clause (iii) of rule 8:

"(iii) The probationers recruited directly to the Bombay Service of Engineers, Class II cadre in any year shall, in a bunch, be placed senior to promotees confirmed during that year."

It is patent that this clause is highly discriminatory against promotees and accords a preferential treatment to direct recruits. Its principal justification is said to be that persons who are promoted as officiating Deputy Engineers do not belong to Class II cadre so long as they are not confirmed as Deputy Engineers, whereas direct recruits appointed on probation as Deputy Engineers enter that class or cadre on the very date of their appointment since, on satisfactory completion of probation, confirmation is guaranteed to them. This contention needs careful examination."

The Honorable Apex Court has further observed about the appeals arising from the State of Gujarat in para 35, which reads as under :

"35. In so far as the Gujarat appeals are concerned, Shri N.S. Nagrani, Under Secretary to the Government of Gujarat, P.W.D., filed an affidavit dated April 28, 1970 in one of the writ petitions, 422 of 1970. He says in that affidavit that "temporary posts are to be treated as temporary additions to the respective cadres of B.S.E. Class I and Class II", that "permanent

posts are not created anew but come into existence by the conversion of the existing temporary posts into permanent posts" and that "both the temporary posts and permanent posts are two categories of posts belonging to the same cadre". To the similar effect is the affidavit dated June 22, 1970 made in another writ petition, 1099 of 1969, by Shri A.R. Bhatt, Under Secretary to, the Government of Gujarat, P.W.D. He says therein that "there are no separate categories of permanent and temporary posts of Deputy Engineers. Temporary post of Deputy Engineers are treated as temporary additions to the G.S.E. Class II cadre." Pleading on behalf of the Gujarat Government, Shri Bhatt stoutly resisted the claim of direct recruits that they had prior claim for consideration for promotion to the posts of Executive Engineers on the ground that they belong to the Class II cadre while the officiating Deputy Engineers do not."

Finally, the Apex Court has held that,

"39. If officiating Deputy Engineers belong to Class II cadre as much as direct recruits do and if the quota system cannot operate upon their respective confirmation in that cadre, is there any valid basis for applying different standards to the members of the two group for determining their seniority? Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in their respective assignments. And yet clause (iii) of rule 8 provides that probationers recruited during any year shall in a bunch be 'treated as senior to promotees confirmed in that year. The plain arithmetic of this formula is that a direct recruit appointed on probation say in 1966, is to be regarded as senior to a promotee who was appointed as an officiating Deputy Engineer, say in 1956, but was confirmed in 1966 after continuous officiation till then. This formula gives to the direct recruit even the benefit of his one year's period of training and another year's period of probation for the purposes of seniority and denies to promotees the benefit of

> their long and valuable experience. If there was some intelligible ground for this differentiation bearing nexus with efficiency in public services, if might perhaps have been possible to sustain such a classification. It is interesting that time and again the State Governments themselves found it difficult to justify the hostile treatment accorded to the promotees. In various affidavits filed on their behalf, entirely contradictory contentions were taken, sometimes in favour of the promotees and sometimes in favour of direct recruits. Instead of adopting an intelligible differentia, rule 8 (iii) leaves seniority to be determined on the sole touchstone of confirmation which Seems to us indefensible. Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency. of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government."

5. Mr.Raval further submitted that the same view is reiterated by the Apex Court in the matter between O.P. Garg and others v. State of U.P. and others, reported in AIR 1991 SC 1202 and thereafter again in the matter between S.L. Chandrakishore Singh v. State of Manipur and others, reported in 1999 AIR Supreme Court Weekly 3631. Thus, the issue involved in this petition is squarely covered by the aforesaid judgement of the Apex Court. In view of the aforesaid three judgements of the Apex Court, the present petition is required to be allowed.

6. The Special Civil Application is allowed. The seniority list, Annexure 'E' to the petition; the orders dated 31.8.1991 and 15.11.1991, at Annexures 'F' and 'H' respectively; and the Circular dated 10.9.1991, Annexure 'K' are hereby quashed and set aside. The respondents are directed to fix seniority of the petitioner in each of these petitions on the basis of the date of

appointment of the petitioner, and accordingly show the name of the petitioners in the seniority list at an appropriate place. The respondents are further directed to give all the consequential benefits pertaining to pay, future promotion and seniority, etc. on the basis of grant of aforesaid relief. Rule is made absolute with no order as to costs.

22nd September 2000 (Ravi R. Tripathi, J.)

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